

EXHIBIT 5

IN RE: SOUTHERN SKY AIR & TOURS, LLC.

ROBERT KEILMAN

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2 A. No.

3 Q. When was your last employment?

4 A. Let's see. Bank of New York, and I
5 left -- I was on disability with Bank of New York
6 for Parkinson's, and I retired in -- I officially
7 retired three years ago, so that would be about
8 19 -- 2010 I guess, 2011.

9 Q. When were you last regularly working
10 at Bank of New York?

11 A. I think it was in 1990.

12 Q. And after 1990 you were on
13 disability from Bank of New York?

14 A. Yes.

15 Q. Can you describe for me the nature
16 of the disability that caused you to stop working
17 actively at Bank of New York?

18 A. It was a couple of things. It was
19 my voice got very low, couldn't speak well, my
20 writing was tampered, I couldn't write legibly.
21 My -- I was tired. My medications make me tired.
22 I couldn't work a full day. Those combination of
23 things, they put me on disability.

24 Q. How long did you work at The Bank of
25 New York?

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2 A. About 25 years.

3 Q. What was your title with the Bank of

4 New York?

5 A. When I left?

6 MS. MURPHY: Yes.

7 A. Senior vice president, comptroller.

8 Q. How long did you have that position?

9 A. I believe about 10, 15 years.

10 Q. What did that position entail?

11 A. Supervision of the accounting area,
12 budgets and then acquisitions.

13 Q. Any day-to-day financial operations?

14 A. No. I wouldn't say day to day. I
15 was a supervisor, so people worked for me.

16 Q. Did you understand daily financial
17 transactions sufficiently that you could manage
18 other people?

19 A. Yes.

20 Q. Did you prepare any financial
21 reports as part of your job as senior vice
22 president or comptroller for Bank of New York?

23 A. I didn't prepare them. Somebody
24 else prepared them, but I received copies and
25 reviewed them.

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2 for loan provisions and things like that, loan
3 loss provisions and capital -- bank capital
4 requirements.

5 Q. Have you ever had experience with an
6 airline transportation or travel company?

7 A. Not before I got involved with
8 direct sky, Direct Air.

9 Q. Can you briefly describe your
10 education and any degrees that you have?

11 A. I've got a BBA degree from Saint
12 Bonaventure University, and I'm a CPA.

13 Q. What is a BBA?

14 A. Bachelor of business administration.

15 Q. When did you become a CPA?

16 A. 1973.

17 Q. Do you need to maintain that status
18 or --

19 A. Well, I'm still a CPA, but I haven't
20 practiced in years.

21 Q. In order to become a CPA, do you
22 need to hold a license?

23 A. Yes. You need to pass an exam and
24 get a license.

25 Q. Are there annual continuing

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2 meeting how the money was going to be spent.

3 Q. Was there a meeting in which
4 everybody understood that this was your purchase
5 of a share of the company and that it would make
6 you a part owner?

7 A. I'm sure there's a formal meeting
8 where we discussed it.

9 Q. But it's your understanding at least
10 there were discussions between all of the
11 founding members --

12 A. Yes. They all understood the
13 \$200,000 gave me part ownership of the company.

14 Q. Are you aware of any other money
15 that was paid to Direct Air for start-up costs at
16 the initiation of the company?

17 A. Yes. There are three other friends
18 of mine that contributed money, and I believe
19 four other business people have contributed
20 money, Myrtle Beach businessmen.

21 Q. Who were your three friends that
22 contributed money?

23 A. Tom Mastro.

24 Q. M-A-S-T-R-O?

25 A. M-A-S-T-R-O, Bob Giordano,

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2 G-I-O-R-D-A-N-O, and Bruce Carusi, C-A-R-U-S-I.

3 Q. Thank you.

4 Are you aware of who the other four
5 local businessmen were?

6 A. Yes. One was Jim Creel, Matthew
7 Brittain, Larry Young. The fourth, I have to
8 think now who it was. Can't think of the fourth
9 one now.

10 Q. Do you know the amounts of their
11 investments?

12 A. Yes. Each one contributed a hundred
13 thousand dollars.

14 Q. Are you aware if there was any
15 documentation of these monies?

16 A. Yes, there was.

17 Q. What is that?

18 A. Well, the deposit was recognized
19 when she put the money in, and there also was a
20 sales document that they received.

21 Q. What's a sales document?

22 A. -- I don't know what you call it,
23 like a memorandum of understanding. I'm not sure
24 what the actual word was, what we used for it,
25 but it was a document that -- the offering.

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2 document they received.

3 Q. Did they receive a portion of
4 ownership in the company for their investment?

5 A. Yes, they did. They each received 3
6 percent ownership.

7 Q. And your understanding that there is
8 a document that identifies their investment and
9 their ownership share?

10 A. Yes, I believe so. That should be
11 in the records down in Myrtle Beach, wherever the
12 records are kept.

13 Q. Do you believe it was executed
14 contemporaneously with receiving their money?

15 A. I don't know when it was executed.

16 Q. Do you recall if you signed that
17 document on behalf of Direct Air?

18 A. I don't think I did.

19 Q. What was the understanding with
20 respect to how these investments would be repaid?

21 A. They were investments. There was no
22 understanding how they would be repaid. They
23 were just investments in the company.

24 Q. Was there any agreement on whether
25 they would receive profits on a yearly basis?

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2 A. There was no understanding other
3 than they assumed -- I can't say what they would
4 assume. But there was no understanding what
5 payments would be made from these, that they
6 would benefit from it at all.

7 Q. Was there any understanding of the
8 conditions under which they may get their initial
9 investment back?

10 A. No, there were no conditions.

11 Q. I'm sorry. Are you saying there's
12 no conditions under which they would get their
13 money back or there was no understanding about
14 what the conditions would be to get the money
15 back?

16 A. I'm not sure if I understand your
17 question. There was no expectations, nor were
18 any promises made to them about how they would
19 get repaid.

20 Q. The founding five members, and I
21 apologize, I may refer to them collectively as
22 the founding members from time to time, my use of
23 that term would include Judy Tull, Kay Ellison,
24 Marshall Ellison, Ed Warneck and yourself. Is
25 that an accurate description of the founding

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2 members?

3 A. That's correct.

4 Q. Each of the founding members was
5 given a title; is that correct?

6 A. I believe so, yes.

7 Q. Judy Tull was the CEO?

8 A. Yes.

9 Q. Ed Warneck was president?

10 A. Yes.

11 Q. Marshal Ellison and Kay Ellison were
12 both vice presidents?

13 A. I'm not sure what title they had
14 originally when the company was formed.

15 Q. Are you aware at any time that they
16 held the title of vice president?

17 A. I don't know if they ever held the
18 vice president title. I'm sure -- titles weren't
19 used that much down there, so I'm not sure what
20 title they went by.

21 Q. Are you aware that Stanley Ellison
22 also had the title of secretary?

23 A. No. I thought Kay was the
24 secretary.

25 Q. And you had the title of CFO,

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2 correct?

3 A. I had the title, but I really
4 wasn't -- I couldn't really say I was the CFO. I
5 didn't have the responsibilities of a CFO. I was
6 down there as a consultant. And I didn't get
7 paid a salary. I was never an employee of the
8 company. I never received a salary from the
9 company.

10 Q. Let me go back, because you answered
11 a lot of things right there.

12 A. You did have the title CFO, correct?

13 A. They gave me the title to put on
14 paper, but I didn't really function as a CFO.

15 Q. So the answer to that is yes, you
16 did have the title CFO, correct?

17 A. Yes.

18 Q. In your answer you said you were
19 down as a consultant. What does that mean?

20 A. I was -- just to give them advice.
21 If they ever had questions I'd help them out,
22 general business knowledge.

23 Q. What was expected of you, in terms
24 of your contribution to the company?

25 A. Just somebody with general business

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2 in the day-to-day operations of the company?

3 A. No, I wasn't.

4 Q. Were you involved in the development
5 of the operations of the company?

6 A. No. That was done by Judy and Kay
7 most of the time. I'll give you a background
8 information, if that would help. Originally --

9 Q. I need you to speak a little bit
10 slower, and if you can keep your voice up so we
11 can get a good record.

12 A. Okay.

13 Originally my intent was just to
14 help them out, raise capital to get the company
15 started and to be somebody who helped them with
16 decisions they had to make down the road. I told
17 them I could spend no more than three days a
18 month down there, which I did for about the first
19 two years.

20 Then I got more active when
21 potential buyers present themselves to the
22 company. I was involved with helping them
23 negotiate the transaction. And I spent more time
24 down there then doing due diligence with the
25 potential buyers as my time increased with them,

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2 so I was down there to give them advice and
3 counsel about selling the company and helping
4 them with the transaction, the documents that
5 needed to be prepared.

6 Q. You mentioned giving them counsel.

7 You're not an attorney, are you?

8 A. No, I'm not. Financial advice I
9 should say.

10 Q. That's okay. I wanted to clarify
11 that.

12 Why did you spend more time with
13 Direct Air helping out with the acquisition?

14 A. Because I knew that's what the
15 company had to do to survive. I knew it was
16 important to get this done properly.

17 Q. Did you have a concern that it
18 wouldn't be handled properly if you weren't
19 involved?

20 A. No. I just wanted to make sure that
21 I was down there to help make sure it was handled
22 properly, but I didn't have any reservation about
23 it being done right.

24 Q. I'm showing you what's previously
25 been marked as Exhibit 43. It's entitled

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2 Q. If not that type of report, how
3 would you get information about how long between
4 a booking and a flight?

5 A. I'm trying to think if there's a
6 report that would give you that.

7 Q. Well, do you recall how you obtained
8 that information?

9 A. I wasn't concerned with the timing
10 of the flights. I just was concerned with the
11 tickets sold. There was a report called Cross
12 Tab report, which showed all tickets sold in a
13 current period, and I worked with that report.

14 Q. Do you have any understanding of
15 what percentage of Direct Air's business was
16 same-day ticket sales?

17 A. Very little. You mean how many
18 people pay for a ticket that fly that same day?

19 Q. Yes. Do you know how much of Direct
20 Air's business was people who went to the ticket
21 counter and paid to fly on the same day?

22 A. I wouldn't have the direct
23 knowledge, but I would say very few.

24 Q. Would you say about one percent of
25 the business?

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2 A. Yeah, about one percent. That's
3 based on just general knowledge, no report or
4 nothing to tell me that.

5 Q. Understood.

6 So your understanding is most
7 people, in fact nearly all of Direct Air's
8 business, was for people who booked and flew at
9 some date in the future, correct?

10 A. Correct.

11 Q. Do you have an understanding of what
12 happened to customer funds paid for advance
13 flights?

14 A. Just my knowledge that it was
15 booked, and Radixx would record the transaction
16 of the person buying the ticket, and they would
17 send the money to Valley National Bank that they
18 collected.

19 Q. Do you have any understanding of how
20 the Valley National Bank account operated?

21 A. No.

22 Q. You understand from Exhibit 43 that
23 we looked at earlier that you are a signer on
24 that account, correct?

25 A. Correct.

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2 Take a look at that and tell me if
3 you've ever read those provisions before.

4 A. I've never seen this.

5 Q. I'm sorry. You've never seen that?

6 A. Never seen this, no.

7 Q. Did anyone explain to you that there
8 were Department of Transportation regulations
9 that governed how the escrow account was set up
10 and how it can be used?

11 A. I'm not sure if we ever had
12 discussions like that, but I was told that by
13 Judy and Kay that you can draw money out for
14 certain types of transactions.

15 Q. What were the transactions that you
16 could draw money out for as it was explained to
17 you?

18 A. For luggage fees, ancillary fees,
19 ancillary type of -- like reserve seat fees,
20 luggage fees, things like that.

21 Q. So it's your understanding, from
22 your earlier testimony, is all of the passenger
23 money had to go into escrow?

24 A. All into escrow, then she would
25 decide what to pull out of escrow.

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2 Q. And before a flight has been
3 completed, what is your understanding of what
4 portion of the customer money could be taken out?

5 A. Certain allowable fees, ancillary
6 fees could be taken out.

7 Q. What exactly are you referring to
8 when you say "ancillary"?

9 A. Baggage fees, like reserve seats,
10 first class seats, upgrades, things like that.

11 Q. I am handing you what's previously
12 been marked Exhibit 40. It's a Public Charter
13 Depository Agreement between Direct Air, Aviation
14 Advantage, Inc. d/b/a Southern Skyways and Valley
15 National Bank (handing).

16 Have you ever seen that document
17 before?

18 A. I don't believe so, no.

19 Q. Valley National Bank has testified
20 that this is the document governing the escrow
21 account held by Direct Air at Valley National
22 Bank.

23 Is that your understanding of what
24 this document is?

25 A. I don't know what the document is,

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2 A. Yes.

3 Q. You mentioned in Ms. Baldwin's
4 responsibilities that she was supposed to balance
5 the bank accounts or reconcile them.

6 A. Yes.

7 Q. Which bank accounts?

8 A. All the bank accounts. There were
9 about five of them I believe.

10 Q. Are you aware that Ms. Baldwin had
11 no access to the Valley National Bank escrow
12 account?

13 A. I guess so, yeah. I don't know if
14 she did or didn't, but I expect -- she wouldn't
15 sign for anything for Valley National Bank.

16 Q. Was it your understand that she was
17 reconciling the Valley National Bank account?

18 A. I didn't know who was reconciling
19 that account. I assumed it was either Mary or
20 Kay.

21 Q. You understood that all the
22 passenger money got paid into the Valley National
23 Bank escrow account, correct?

24 A. Yes.

25 Q. Did you understand that the purpose

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2 of that account was a customer or consumer
3 protection purpose?

4 A. Yes.

5 Q. And it was your understanding that
6 the money was held in escrow so that if a
7 passenger didn't fly, the passenger was able to
8 recover its money?

9 A. Yes.

10 Q. So it would be important that the
11 balance in the Valley National Bank account was
12 accurate, correct?

13 A. Yes.

14 Q. And for the account to be accurate
15 it needed to have in it all of the money the
16 passengers paid for future flights that have not
17 flown, correct?

18 A. Yes.

19 Q. What was your understanding about
20 who was verifying that the passenger payments
21 that had been made for flights that had not been
22 flown was in the Valley National Bank account?

23 A. Say that again. For flights that
24 weren't flown?

25 Q. For flights that had not been flown.

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2 this. I prepared it, but I'm not sure if it was
3 ever sent out or what we did with it.

4 Q. And it is entitled Management
5 Discussion and Analysis of the Financial
6 Statements.

7 Do you recall if the information
8 came from a meeting of the founding members?

9 A. It wasn't done at a meeting, but I
10 might have got information from each of the
11 founding members to fill in the narrative.

12 Q. And the projections for 2008 is that
13 the company was expected to earn 1 to \$2 million
14 and be a profitable company, correct?

15 A. That's correct.

16 Q. That didn't happen, though, did it?

17 A. It didn't happen.

18 Q. And is it your understanding that
19 Direct Air on a year-to-year basis never had
20 positive earnings?

21 A. That's correct.

22 Q. Is it possible in a financial
23 setting or in the financial world that a company
24 that had negative earnings every year could have
25 a positive balance sheet?

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2 the same documents that follow the first page?

3 A. These are just different time
4 periods, the same information.

5 Q. You became aware at some point that
6 there was a shortfall in the escrow account,
7 correct?

8 A. Yes.

9 Q. Do you recall when it was that you
10 became aware?

11 A. Probably in 2009 I guess. I'm not
12 sure.

13 Q. How did you first become aware that
14 there was a shortfall, and why do you think it
15 was in 2009?

16 A. 2009 is just what I recall. I'm not
17 sure if that is correct, but I think that's when
18 I got it. I know it would have been from Kay
19 Ellison who worked on the account.

20 Q. Do you know how it was that Kay
21 Ellison first discovered that there was a
22 shortfall?

23 A. No, I don't. She used to work with
24 the Radixx reports and get information off of
25 Radixx, and that's how she found out.

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2 Q. There's been testimony in other 2004
3 examinations that the shortfall was first
4 uncovered because of gathering financials for the
5 proposed Vision acquisition?

6 A. That could be. I'm not sure.

7 Q. Is that your recollection?

8 A. I don't have a recollection. I
9 don't know when I found out, but that could be
10 true. I'm not sure.

11 Q. Your earlier testimony was that your
12 involvement in the company increased at the time
13 that there were attempts to be acquired.

14 A. That's correct.

15 Q. Do you recall Vision being
16 interested in acquiring Direct Air?

17 A. Yes.

18 Q. Were you involved in the efforts to
19 attract Vision?

20 A. Judy and Kay had relations with
21 Vision. They knew the management from other
22 dealings that they had. I think we leased planes
23 from Vision before they approached us. There was
24 a commonality in management that they thought
25 they'd get together and do a deal.

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2 the final shortfall number?

3 A. Roughly it's the \$18,771,319 less
4 about \$6 million of -- less prepaid fuel, prepaid
5 ACMI, prepaid vision delay, credit card
6 processing, voucher reduction. That amount,
7 those pieces, which adds up to about \$6 million,
8 would offset the 18, so you'd have about \$12
9 million of total escrow to be replaced.

10 Q. Do you have any understanding of
11 what the bottom section related to family ties
12 is?

13 A. Not really. I get confused every
14 time I look at it.

15 You do too I guess.

16 MS. MURPHY: It's been a common
17 answer this week for this document.

18 Q. Are you aware that other founding
19 members were expecting you to be able to pay this
20 \$5 million shortfall?

21 A. I heard that for the first time
22 about two weeks ago.

23 Q. Who did you hear that from?

24 A. I think Kay or Judy, one of the two.
25 I'm not sure who.

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2 A. Correct.

3 Q. Prior to the deal falling apart, did
4 Jeff Conry make representations to you about what
5 TMC Avion would do when they acquire Direct Air?

6 A. Not to me, but to -- Judy and Kay
7 relayed to me what he had said.

8 Q. I'm sorry to interrupt.

9 So your understanding is Mr. Conry
10 made statements to Judy Tull and Kay Ellison and
11 then Kay Ellison and Judy Tull reported those
12 statements to you?

13 A. Yes.

14 Q. What were those statements?

15 A. That TMC was going to move the
16 operation to Los Angeles, that they weren't going
17 to come up with airplanes we needed and wouldn't
18 be able to fund it properly, so we should talk to
19 these new guys, Avondale. So Jeff Conry scared
20 the heck out of Judy and Kay.

21 Q. But for Mr. Conry's statements,
22 would Direct Air have consummated the deal with
23 TMC Avion?

24 A. I believe they would have.

25 Q. Were you in favor of going through

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2 with the deal with TMC Avion?

3 A. Yes.

4 Q. But for Mr. Conry's statement?

5 A. Before his statements, yes.

6 Q. Mr. Conry then introduced you to the
7 Avondale entities and proposed a deal with them,
8 correct?

9 A. Correct.

10 Q. And ultimately that's the deal that
11 went through?

12 A. Yes.

13 Q. What was your involvement in the due
14 diligence related to that?

15 A. I was pretty heavily involved. Kay
16 organized it, but I was -- I worked very close
17 with Don Stukes and giving all the financial
18 information and stuff like that and actually
19 negotiated the deal. The deal was supposed to be
20 the exact same deal that TMC offered us, but then
21 they modified it towards the end.

22 MS. MURPHY: I am going to mark as
23 the next exhibit, 68, this yellow folder
24 which says "Due Diligence."

25 THE WITNESS: Pretty thin.

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2 A. No, I did not.

3 Q. On the second page, the paragraph
4 that starts "Fourth," the letter states, quote,
5 "Mr. Keilman was not an insider of the debtor,"
6 closed quote.

7 Do you know where that statement
8 comes from?

9 A. Where is that, Jessie?

10 Q. The paragraph that starts "Fourth."

11 A. That refers to the time that
12 Avondale took over the company as of September
13 29, 2011 through March I was not involved with
14 the company other than being a friend to them,
15 but I wasn't involved. I had no responsibilities
16 and no duties with the new company.

17 Q. Was there a change to the title of
18 CFO for Direct Air?

19 A. Yes, there was. On the date of
20 closing, they named this guy George, I'm not sure
21 of his last name. You may have it.

22 Q. George McConoughy?

23 A. That may be his last name. He was
24 only around for a week or so, then Wayne Greene
25 came in, he became the CFO.

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2 transfers of money to the ACMI carrier, the fuel
3 carrier and what she needed for operations.

4 Q. Do you have any reason to believe
5 that the requests to pay the fuel carriers or for
6 ACMI were inflated in any way?

7 A. I have no way of knowing that.

8 Q. Until September 2011, you were a
9 little less than one-fifth owner of Direct Air,
10 correct?

11 A. Correct.

12 Q. And at a certain point in time in
13 2009 or 2010 you learned that there was a
14 multimillion dollar shortfall in the escrow
15 account, correct?

16 A. Yes.

17 Q. Why didn't you take any steps to
18 investigate the source, you personally, to make
19 sure that it didn't get worse?

20 A. Because I thought the operations
21 would turn around and we'd start making money.
22 When that didn't happen, we looked for buyers to
23 buy out the company that could take over the
24 liability.

25 Q. But those are talking about

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2 solutions. I am talking about trying to
3 understand or fix the problem and how you got
4 there. Why didn't you take any steps to do that?

5 A. I want to answer you correctly.
6 Because I thought we could work our way out of
7 it, to be honest with you. I thought the company
8 would turn around, the income that it would
9 generate would go back into the escrow account.
10 That not working, we sold the company to somebody
11 who would be able to take care of it.

12 Q. Do you understand that the shortfall
13 arose because more money was being taken out of
14 the escrow account than was going in?

15 A. I don't know if that's a hundred
16 percent correct. We were taking money out that
17 we shouldn't have taken out, that's true, but I
18 don't know how much more money was going in than
19 taking out.

20 Q. I'm sorry?

21 A. Going in versus coming out.

22 Q. Are you saying you were taking out
23 money that you shouldn't have?

24 A. Yes.

25 Q. And if you don't fix those problems,